THE HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 36480 of 1998

DATED:12.08.2005

Between:

Smt. Maitreyi Mazumdar,

W/o. B.K.Maazumdar,

Aged 38 years, H.No.1-2-332/8/3,

PlotNo.494, Domalguda,

Hyderabad 500 029 …Petitioner

AND

1. Indian Immunologicals Management

Committee, NDDB, Anand,

Gujarat State and two others …Respondents

THE HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.36480 of 1998

ORDER:

This writ petition is filed seeking a writ of mandamus to declare the proceedings No.II.ADM:98:2789, dated 14.12.1998 issued by the 2nd respondent as illegal and violative of principles of natural justice.

It is the case of the petitioner that she joined in the respondent organization as a telephone operator on 1-10-1982. She was promoted as a Junior Assistant Grade-I in the year 1987. On 1.11.1996, she was transferred to the purchase section from the accounts section as Junior Assistant Grade-I. Subsequently, in March, 1997 she was promoted as a Supervisor. While so, she was placed under suspension and a charge sheet was issued on 24.10.1997 on the allegation that on 3-9-1997 available quoted rates of Vitamin-C were revealed to one V. Kama Raju of M/s. M.S.Pharma. On the basis of such rates, the said Kama Raju has written his modified quotation, and the same was accepted. It was also alleged that the quotation dated 1-9-1997, for quoted rate at Rs.335/- per Kg was brought down to Rs.270/- per kg and on that basis, the order was placed by M/s. M.S. Pharma only for Rs.266/- on 4-9-1997. It was further alleged that she in collusion with Mr. S.V. Guru, Assistant Manager (Purchase) violated the purchase procedure manual and without placing the order before the purchase committee for approval, accepted the supply of 100 Kg of OTC Hcl from M/s M.S. Pharma of the value of Rs.1,05,000/- plus CST on 9.10.1997. Further it was alleged that on 21.10.1997 around 9.30 a.m., the petitioner had informed Mr. Kamaraju of M/s. M.S. Pharma that the documents are ready and that she will give the rates quoted by others. The conversation alleged to have been heard by Mr. Riju Varma, Officer (Materials & Planning) and thereby the petitioner committed misconduct as per clause 5 (1), 5 (5), 5(17), 5 (20) and clause 11 of Indian Immunologicals Conduct, Discipline and Appeal Rules.

According to the petitioner, she had submitted a detailed explanation denying the charges. Without considering her explanation, an Enquiry Officer (out sider) was appointed and when she asked for change of Enquiry Officer, her request was not accepted. Finally, the Enquiry Officer submitted report holding the petitioner guilty of the charges. On the basis of report of the Enquiry Officer, without properly appreciating the facts and circumstances of the case, the disciplinary authority passed the final orders, dismissing the petitioner from service on 14th December, 1998. Aggrieved by the same, the present writ petition is filed.

A detailed counter-affidavit has been filed on behalf of respondents denying allegations made by the petitioner and it is asserted that the petitioner was allowed to defend herself fully by following the principles of natural justice and she was allowed to see the day-to-day proceedings for the purpose of cross-examining the witnesses or examining the witnesses. In fact, the Enquiry Officer found the

petitioner guilty of the charges and there was no bias on the part of the Enquiry Officer in recording the evidence or giving the findings. Not being satisfied with the explanation submitted by the petitioner, and having regard to the gravity of the charges, the disciplinary authority held that the petitioner is liable for punishment of dismissal from service.

The learned Counsel for the petitioner strenuously contended that the enquiry was conducted in utter violation of principles of natural justice. He further contends that the petitioner had been no access to see the day-to-day proceedings, and the evidence was not properly recorded. Further though the petitioner sought for change of the enquiry officer, her request was rejected without any basis. Even if alleged charges are proved, punishment of dismissal from service is not warranted, and therefore, the impugned order is liable to be set aside.

The learned Counsel for the respondents also strenuously contended that there is no violation of principles of natural justice and any allegation of bias in recording the evidence cannot be attributed to the Enquiry Officer. The learned Counsel further submitted that the findings recorded by the Enquiry Officer are not perverse.

I have given my earnest consideration to the respective submissions made by the learned Counsel on either side and perused the material made available on record.

At the outset, I am of the opinion that in a departmental enquiry, since the strict principles of evidence are not applicable, it cannot be said that the charges are not proved, unless and until it is established that the findings are perverse. In this case, the following three charges were framed against the petitioner:

1. That you have been giving/showing rates quoted by various Suppliers which are strictly confidential to some selected parties/their local representatives, including the following in a dishonest manner.

   That on 3.9.97 all available quoted rates of Vitamin C of various Suppliers are shown to Mr. V.Kama Raju of M/s. M.S.Pharma at around 1 p.m. while you were on duty in your seat. Immediately, Mr. Rjau is reported to have written his/their modified quotation, obviously on the basis of rates obtained from you and the same was immediately accepted by you from that representative and further it was found to be pre-dated as 1.9.97 where their earlier quoted price of Rs.335/- Kg. are brought down to Rs.270/- Kg. and the order was placed on M/s. M.S.Pharma only for Rs.266/- Kg. on 4.9.97.

On the similar occasions also, it has come to the notice of the management that rates have been disclosed to representatives of M/s. Parag Pharmaceuticals and M/s. Rajdhani Scientific M/s. Mulji Mehta International etc.,

2. That you, in collusion with Mr. S.V. Guru, Assistant Manager (Purchase), and at his instance on 6.10.97, grossly violated the Purchase Procedure Manual (Clause No.7.4) and without placing any Purchase Order accepted the supply of 100 Kgs. Of OTC Hel from M/s. Pharma of value of rs.1,05,000/- + CST on 9.10.97 being fully aware that any material of a value of above Rs. 1 lakh requires negotiation and approval by Purchase Committee headed by Chief Executive. This material was recorded as indented for on 4.10.97 vide I.No.439/4.10.97 and it was found that D.C./Invoice No. of the party is dated 4.10.97.

3. That on 21.10.97 at around 9.30 A.M. you informed over phone to Mr. Kama Raju of M/s. M.S.Pharma that "your documents are ready and I shall give you the rates quoted by others. Anyway keep the material ready for dispatch." This was heard by Mr. Raju Verma, Officer (Materials & Planning) and you have acted dishonestly and in violation of the trust reposed in you and against the interests of the Company and subversive of discipline.

In the enquiry report, it has been categorically asserted that the petitioner was allowed to see the day-to-day proceedings and in fact, when she asked to issue copies of the regular manual and the other papers, she was informed of the procedure that in a domestic enquiry at the end of the proceedings all the papers shall be given to the workman concerned on request.

May be, it is the case of the petitioner that no loss is caused to the department. On such ground, it cannot be construed that there were no irregularities committed by the petitioner. Further, the Assistant Manager, who involved as per the charge No.2 in commission of misconduct, and at whose instance, the petitioner grossly violated the purchase manual etc., is concerned, it cannot be said that the petitioner at the instance of even higher officer can do some acts, which are in violation of purchase procedure manual. Insofar as over hearing of the telephonic conversation between the petitioner and one Mr. Kama Raju, by Riju Varma is concerned, it is only hearsay evidence and even if it is proved, it may not lead to suspect the conduct of the petitioner. It is pertinent to note here that the said

S.V.Guru, Assistant Manager (Purchase), at whose instance, the petitioner is alleged to have grossly violated the purchase procedure, resigned from the post during the course of enquiry against the petitioner. He went out of employment without any disciplinary proceedings being initiated he was allowed to resign. May be, they wanted to get rid of him, but it amounts to letting off the officer, who was overseeing the work of the petitioner.

The sum and substance of all the three charges is that the petitioner was not diligent in concealing the quotations. She at the instance of the Assistant Manager (Purchase), who was no more in the organization, has violated the purchase procedure, and when she was talking with one Mr. Kamaraju on telephone, Mr. Viju Verma over heard the conversation between them. According to the respondents, the acts of the petitioner are in violation of the trust reposed in her.

Admittedly, there was no loss caused to the organization. It is not the case of the respondents that she has gained anything wrongfully. It is a fact that while dealing with the available quoted rates, the person, who is in custody of them, shall maintain confidentiality and nothing much. In the present case on hand, it can be said that the petitioner has violated the purchase procedure manual etc. But that cannot be constructed as a serious irregularity, as no previous misconduct or irregularities on the part of the petitioner, were shown by the respondents. It being the first misconduct, the punishment of dismissal from service in the given circumstances of the case is disproportionate to that of the gravity of charges. Therefore, the impugned proceedings are liable to be set aside.

In the result, the Writ Petition is allowed. The respondents are directed to consider the case of the petitioner and impose any lesser punishment than that of dismissal, removal or reversion from the post of Supervisor and pass appropriate orders, within a period of one month from the date of receipt of a copy of this order.

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12th August, 2005

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